



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2011 LRB-3828/1 (For: Rep. Ringhand)

has been copied/added to the drafting file for


2011 LRB-4151 (For: Rep. Ringhand)

 Are These “Companion Bills” ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 02/20/2012 (Per: ARG)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2011 DRAFTING REQUEST**Bill**Received: **01/13/2012**Received By: **agary**Wanted: **As time permits**

Companion to LRB:

For: **Janis Ringhand (608) 266-1192**By/Representing: **Maggie Gau / Joe Hoey**

May Contact:

Drafter: **agary**Subject: **Beverages**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Ringhand@legis.wi.gov**Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Contract brewing, non-producing brewers, brand compensation for wholesalers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/P1	agary 01/19/2012	csicilia 01/26/2012	jmurphy 01/27/2012	_____	lparisi 01/27/2012		State
/P2	agary 02/07/2012	csicilia 02/08/2012	jfrantze 02/08/2012	_____	sbasford 02/08/2012		State
/1	agary 02/14/2012	csicilia 02/15/2012	rschluet 02/15/2012	_____	mbarman 02/15/2012		

LRB-3828

02/15/2012 08:27:29 AM

Page 2

FE Sent For:

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2011 DRAFTING REQUEST

Bill

Received: 01/13/2012

Received By: agary

Wanted: As time permits

Companion to LRB:

For: Janis Ringhand (608) 266-1192

By/Representing: Maggie Gau / Joe Hoey

May Contact:

Drafter: agary

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/?							State
/P1	agary 01/19/2012	csicilia 01/26/2012	jmurphy 01/27/2012		lparisi 01/27/2012		State
/P2	agary 02/07/2012	csicilia 02/08/2012	jfrantze 02/08/2012		sbasford 02/08/2012		

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Received: **01/13/2012**

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Wanted: **As time permits**

Companion to LRB:

For: **Janis Ringhand (608) 266-1192**

By/Representing: **Maggie Gau / Joe Hoey**

May Contact:

Drafter: **agary**

Subject: **Beverages**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ringhand@legis.wi.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

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/?							State
/P1	agary 01/19/2012	csicilia 01/26/2012	jmurphy 01/27/2012		lparisi 01/27/2012		

FE Sent For:

/p2 js 2/8
12
Jb 2/8
<END>

2011 DRAFTING REQUEST

Bill

Received: 01/13/2012

Received By: agary

Wanted: As time permits

Companion to LRB:

For: Janis Ringhand (608) 266-1192

By/Representing: Maggie Gau / Joe Hoey

May Contact:

Drafter: agary

Subject: Beverages

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1/?	agary	pl gjs 1/26 12	gm 4/26	pl 1/27			State

FE Sent For:

<END>

Gary, Aaron

From: Hoey, Joseph
Sent: Thursday, January 19, 2012 11:09 AM
To: Gary, Aaron
Cc: Gau, Maggie
Subject: RE: Draft review: LRB 11-2690/P2 Topic: Allowing brewers to hold retail licenses, small brewer distribution of other brands, brewer sales to brewers, and brand compensation

Aaron,

Sounds good, please add the expedited rule making to the draft.

Thanks,

Joe

*Joseph P. Hoey
Office of State Representative Janet Bewley
74th Assembly District
(608) 266-7690 / (888) 534-0074*

From: Gary, Aaron
Sent: Tuesday, January 17, 2012 9:15 AM
To: Hoey, Joseph
Cc: Gau, Maggie
Subject: RE: Draft review: LRB 11-2690/P2 Topic: Allowing brewers to hold retail licenses, small brewer distribution of other brands, brewer sales to brewers, and brand compensation

Hi Joe,

With the changes this session in rulemaking (Acts 21 and 32), the rulemaking process will probably be quite lengthy. Did you want DOR to be able to implement the provisions of the bill right away? If so, I can include provisions in the draft to expedite rule-making, including emergency rule authority to get things moving. Let me know. Thanks. Aaron

Aaron R. Gary
*Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us*

From: Hoey, Joseph
Sent: Thursday, January 12, 2012 4:21 PM
To: Gary, Aaron
Cc: Gau, Maggie
Subject: RE: Draft review: LRB 11-2690/P2 Topic: Allowing brewers to hold retail licenses, small brewer distribution of other brands, brewer sales to brewers, and brand compensation

Aaron,

1/19/2012

We'd like to start a new LRB number and leave the old drafting instructions behind. Rep. Ringhand will be the official requester. Let Maggie know if you need a separate e-mail from their office in order to do that.

Thanks,

Joe

Joseph P. Hoey
Office of State Representative Janet Bewley
74th Assembly District
(608) 266-7690 / (888) 534-0074

From: Gary, Aaron
Sent: Thursday, January 12, 2012 1:08 PM
To: Hoey, Joseph
Cc: Gau, Maggie
Subject: RE: Draft review: LRB 11-2690/P2 Topic: Allowing brewers to hold retail licenses, small brewer distribution of other brands, brewer sales to brewers, and brand compensation

Joe,

I'm not sure whether it is easier to enter this as a new request or not. Which legislator do you want to be primary on this (the official requester) - Rep. Ringhand or Rep. Bewley? Also, if I do enter it as a new LRB number, do you want the drafting history to follow the new LRB number (i.e. prior instructions included in the drafting file).

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Hoey, Joseph
Sent: Wednesday, January 11, 2012 4:58 PM
To: Gary, Aaron
Cc: Gau, Maggie
Subject: FW: Draft review: LRB 11-2690/P2 Topic: Allowing brewers to hold retail licenses, small brewer distribution of other brands, brewer sales to brewers, and brand compensation

Aaron,

As you know, we've been working with a bunch of different groups on this bill and it hasn't gone as smoothly as we'd have liked. Although I liked your suggestions on how to achieve the objectives we were aiming for, it looks as if we're going to have to try a different approach to make everyone happy. Below is the statutory language that the various players have agreed on, along with a description of our objectives. I'm not sure if it makes sense to do another draft of LRB-2690 or if it would be easier to start anew. Please let me or Maggie know if there are any problems with using this language or if you have any questions.

Thanks,

1/19/2012

Joe

Joseph P. Hoey
Office of State Representative Janet Bewley
74th Assembly District
(608) 266-7690 / (888) 534-0074

Objective: Make clear that brand compensation calculation of fair market value of a terminated wholesaler's distribution rights does not include any beer sold at retail by the brewer or brewpub within the terminated wholesaler's distribution territory.

125.33(10)(b) of the statutes would be amended to read:

(b) Except as provided in par. (c) and subject to pars. (d), ~~and (e)~~, and (f), a successor wholesaler shall compensate a terminated wholesaler for the fair market value of the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages assumed by the successor wholesaler for the same territory, less any amount paid to the terminated wholesaler by the brewer, brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit for the discontinued brand. If the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages are divided among 2 or more successor wholesalers, each successor wholesaler shall compensate the terminated wholesaler for the fair market value of the distribution rights to any discontinued brand of fermented malt beverages assumed by that successor wholesaler for the applicable part of the same territory, less any amount paid to the terminated wholesaler by the brewer, brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit for the discontinued brand. A terminated wholesaler may not receive under this paragraph total compensation from the successor wholesaler and brewer, brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit that exceeds the fair market value of the terminated wholesaler's distribution rights specified under this paragraph.

125.33(10)(f) of the statutes would be created to read:

(f) Fair market value under par. (b) shall not include any amount related to a brewer's or brewpub's retail sales within the terminated wholesaler's territory.

Objective: Establish a statutory framework so that a brewer may operate as a “contract brewer” in order to manufacture fermented malt beverages at its brewery premises for other brewers and out-of-state brewers.

Establish a statutory framework so that a brewer may operate as a “start-up brewer” with recipes and a relationship with a contract brewer but without a bricks-and-mortar brewery premises.

All brewers would be required to hold a brewer’s permit and comply with statutory requirements as a brewer but a brewer also could obtain an additional designation as a contract brewer or a start-up brewer.

125.02 (4m) of the statutes is created to read:

(4m) “Contract brewer” means a brewer that in addition to brewing its own fermented malt beverages also manufactures at its brewery premises fermented malt beverages for other brewers or out-of-state brewers.

125.02 (11m) of the statutes is created to read:

(11m) “Out-of-state brewer” means a brewer or other manufacturer of fermented malt beverages that does not maintain an office or street address within this state and has not been issued a permit under s. 125.29.

125.02 (15s) of the statutes is created to read:

(15s) “Start-up brewer” means a brewer that does not have its own brewery premise but has entered into a contractual relationship with a contract brewer for the manufacturing of the start-up brewer’s fermented malt beverages using recipes owned or licensed by the start-up brewer.

125.029 (3) (k) of the statutes is created to read:

(k) Subject to the requirements in sub. (7), operate as a contract brewer or start-up brewer.

125.029 (7) of the statutes is created to read:

(7) REGISTRATION AND ACTIVITIES OF CONTRACT BREWERS AND START-UP BREWERS. To operate as either a contract brewer or a start-up brewer, a brewer shall meet the standards established by the department by rule and register with the department. Those standards shall include:

- (a) All contract brewers and start-up brewers shall operate under a brewers permit issued under s. 125.29.
- (b) A contract brewer may not contract with another brewer or out-of-state brewer to manufacture fermented malt beverages unless the parties have entered into a written agreement.
- (c) All out-of-state brewers entering into an agreement with a contract brewer must

register with the department.

- (d) In complying with state law requirements for brewers, a start-up brewer may consider the contract brewer's brewery premises to be the start-up brewer's brewery premises.



DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and Trade
Bureau

Industry Circular

Number: 2005-2
Date: August 12, 2005

To download a PDF file, you must have Adobe Acrobat Reader software installed on your system. To download a free copy of Adobe Reader, [click here](#).

Alternating Proprietors at Brewery Premises

To: Brewers and Others Concerned

Purpose of this Circular

This Circular—

- Summarizes the existing policy of the Alcohol and Tobacco Tax and Trade Bureau (TTB) regarding the qualification and operation of alternating proprietors at breweries;
- Describes the differences between alternating proprietors at breweries and contract brewing arrangements;
- Outlines the procedures for brewers to follow when they apply for alternating proprietor arrangements;
- States TTB policy regarding alternating brewery proprietors that may be eligible to pay the reduced rate of tax;
- Defines the policy TTB applies regarding the continuing operation of existing alternating brewery arrangements, including instances when those arrangements are inconsistent with TTB guidelines;
- Announces that all previous approvals under 27 CFR 25.52(a) that allow operation as an alternating proprietor at a brewery no longer apply as of September 1, 2006; and
- Advises brewery proprietors who alternate premises to resubmit applications for alternate methods of operation if they intend to continue operating as an alternating brewery proprietor after August 31, 2006.

Reason for Issuance

We issue this Circular for two reasons. First, we want to provide guidance to brewers and others who wish to obtain under 27 CFR 25.52 TTB approval for a variation from existing regulatory requirements (alternate method or procedure) that would allow them to establish alternating brewery proprietorships. Regulations in 27 CFR part 25 do not expressly authorize these arrangements and provide no guidance for the establishment or operation of alternating brewery proprietorships.

Second, we want to resolve problems that we discovered through examination of applications at the National Revenue Center (NRC) and through field audits of operations. These problems relate to certain aspects of alternating brewery operations. Examples of such problems include the splitting of beer production, contractual relationships, and the blending of beer. We believe some of these problems result from Bureau failure to state clearly Bureau guidelines for the operation of alternating brewery proprietorships. In this Circular, we provide guidance regarding the standards TTB applies for the establishment and continuing operation of alternating brewery proprietorships.

Background

The Homeland Security Act of 2002 brought TTB into being and resulted in the transfer of the revenue collection function and certain other duties of the Bureau of Alcohol, Tobacco and Firearms (ATF) to TTB. In this Circular, the pronoun "we" refers to TTB. Sections 7805 and 5051, among others, of the Internal Revenue Code of 1986 (the IRC) authorize the Secretary of the Treasury to administer requirements for qualifying a brewery, operating a brewery, and for paying tax and labeling beer removed from a brewery. The Secretary has delegated such functions to TTB. Regulations in 27 CFR part 25 implement the IRC beer provisions and include requirements on brewers that cover the production, removal, and taxpayment of beer. In those regulations, TTB sets out requirements for qualifying for the reduced tax rate for small brewers for which certain alternating brewery proprietors may be eligible.

Contract brewing arrangement and alternating brewery proprietorship arrangement differences

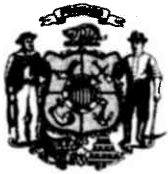
What is a "contract brewing" arrangement?

A contract brewing arrangement is a business relationship in which one person, such as a wholesale or retail dealer or a brewer, pays a brewing company, the "contract brewer," to produce beer for him or her. The contract brewer is entirely responsible for producing the beer, keeping appropriate brewery records, labeling the beer with its name and address, obtaining necessary certificates of label approval (COLAs), and paying tax at the appropriate rate upon removal of the beer from the brewery. The contract brewer retains title to the beer at least until the beer is taxpaid or removed from the brewery. TTB considers contract brewing arrangements to be ordinary commercial arrangements.

What is an "alternating brewery proprietorship"?

An "alternating proprietorship" is a term we use to describe an arrangement in which two or more people take turns using the physical premises of a brewery. Generally, the proprietor of an existing brewery, the "host brewer," agrees to rent space and equipment to a new "tenant brewer." The tenant qualifies as a brewer under part 25 by filing the appropriate documents with TTB. The tenant produces beer, keeps appropriate brewery records, labels the beer with its own name and address, obtains the necessary COLAs, and pays tax at the appropriate rate upon removal of its beer from the brewery. The tenant brewer has title to the beer at all stages of the brewing process.

Alternating brewery proprietorships allow existing breweries to use excess capacity and give new entrants to the beer business an opportunity to begin on a small scale,



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3828/P1

ARG:.....

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

SA ✓

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- 1 AN ACT ~~relating to:~~ authorized operations of brewers, compensation for loss
- 2 of fermented malt beverages distribution rights, providing an exemption from
- 3 emergency rule procedures, and requiring the exercise of rule-making
- 4 authority.

Analysis by the Legislative Reference Bureau

Under current law, a brewer holding a brewer's permit may, among other activities authorized under its brewer's permit: 1) sell, ship, transport, and deliver its own fermented malt beverages (beer) to wholesalers; 2) transport beer between the brewer's brewery premises and any depot or warehouse maintained by the brewer; and 3) if the brewer produces 300,000 barrels or less of beer per year, sell, ship, and deliver its own beer to retailers, from the brewery premises.

This bill creates two new categories of brewers, to be known as "contract brewers" and "start-up brewers." A contract brewer is a brewer that, in addition to brewing its own beer, also brews beer at its brewery for other brewers. A start-up brewer does not have its own brewery and does not brew beer, but enters into contractual relationships with one or more contract brewers for the brewing of the start-up brewer's beer using recipes owned or licensed by the start-up brewer. Under the bill, when a contract brewer and a start-up brewer have entered into a contractual relationship for the brewing of the start-up brewer's beer at the contract brewer's brewery, this brewery is considered the "brewery premises" of both the contract brewer and the start-up brewer, and all activities authorized on brewery premises are authorized for both the contract brewer and the start-up brewer. To

operate as a contract brewer or a start-up brewer, a brewer must register with the Department of Revenue (DOR) and meet standards established by DOR by rule. These rules must require each contract brewer and start-up brewer to hold and operate under a brewer's permit and require a contract brewer to have a written agreement for any contract brewing relationship with an out-of-state brewer or other brewer. The bill includes a definition of an "out-of-state brewer" and requires out-of-state brewers to register with DOR before they may enter into an agreement with a contract brewer for the brewing of beer.

Current law also requires that beer wholesalers enter into written agreements with brewers and brewpubs supplying beer brands that grant to the wholesalers distribution rights within exclusive sales territories. Under current law, with certain exceptions, if a wholesaler's distribution rights to a beer brand are terminated, the successor wholesaler assuming distribution rights of the brand must compensate the terminated wholesaler for the fair market value of the terminated distribution rights.

This bill specifies that "fair market value," for these purposes, does not include any amount related to a brewer's or brewpub's retail sales within the terminated wholesaler's territory.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 125.02 (2) of the statutes is amended to read:

2 125.02 (2) "Brewer" means any person ~~who~~ that manufactures fermented malt
3 beverages for sale or transportation on if a start-up brewer that enters into a
4 contractual relationship with a contract brewer, except that "brewer" does not
5 include a permittee under s. 125.295.

History: 1981 c. 79, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1985 a. 47, 302, 337; 1989 a. 253; 1991 a. 39; 1993 a. 27, 112; 1997 a. 27; 1999 a. 163; 2007 a. 20 ss. 2757ic to 2757we, 2759ci; 2007 a. 85; 2011 a. 32.

6 **SECTION 2.** 125.02 (3) of the statutes is renumbered 125.02 (3) (intro.) and
7 amended to read:

8 125.02 (3) (intro.) "Brewery premises" means the following:

1 (a) Except as provided in par. (b), all land and buildings used in the
2 manufacture or sale of fermented malt beverages at a brewer's principal place of
3 business.

History: 1981 c. 79, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1985 a. 47, 302, 337; 1989 a. 253; 1991 a. 39; 1993 a. 27, 112; 1997 a. 27; 1999 a. 163; 2007 a. 20 ss. 2757te to 2757we, 2759ci; 2007 a. 85; 2011 a. 32.

4 **SECTION 3.** 125.02 (3) (b) of the statutes is created to read:

5 125.02 (3) (b) With respect to a start-up brewer, all of the following:

- 6 1. The brewer's principal place of business. Start-up
- 7 2. The brewery premises of any contract brewer with which the start-up
8 brewer has a contractual relationship for the manufacturing of the start-up brewer's
9 fermented malt beverages.

10 **SECTION 4.** 125.02 (4m), (11m) and (15s) of the statutes are created to read:

11 125.02 (4m) "Contract brewer" means a brewer that, in addition to
12 manufacturing its own fermented malt beverages, also manufactures at its brewery
13 premises fermented malt beverages for other brewers or out-of-state brewers.

14 (11m) "Out-of-state brewer" means a manufacturer of fermented malt
15 beverages that does not maintain an office or street address within this state and has
16 not been issued a permit under s. 125.29.

17 (15s) "Start-up brewer" means a person ~~brewer~~ that does not have its own brewery
18 premises and does not manufacture fermented malt beverages, but has entered into
19 a contractual relationship with a contract brewer for the manufacturing of the
20 start-up brewer's fermented malt beverages using recipes owned or licensed by the

21 start-up brewer.

22 **SECTION 5.** 125.29 (3) (k) of the statutes is created to read:

23 STET: 125.29 (3) (k) If the applicant is a contract brewer or start-up brewer, to operate
24 as a contract brewer or start-up brewer, subject to the requirements under sub. (7).

SECTION 6. 125.29 (7) of the statutes is created to read:

125.29 (7) REGISTRATION AND ACTIVITIES OF CONTRACT BREWERS AND START-UP BREWERS. (a) To operate as a contract brewer or a start-up brewer, a brewer shall register with the department and meet the standards established by the department under par. (c).

(b) Before any out-of-state brewer may enter into an agreement with a contract brewer for the manufacture of fermented malt beverages, the out-of-state brewer shall register with the department.

(c) The department shall promulgate rules establishing standards for contract brewers and start-up brewers. These rules shall include all of the following:

1. Each contract brewer and start-up brewer shall hold and operate under a brewer's permit issued under this section.

2. A contract brewer may not contract with an out-of-state brewer or other brewer to manufacture fermented malt beverages unless the parties have entered into a written agreement.

SECTION 7. 125.33 (10) (b) of the statutes is amended to read:

125.33 (10) (b) Except as provided in par. (c) and subject to pars. (d) and, (e), and (f), a successor wholesaler shall compensate a terminated wholesaler for the fair market value of the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages assumed by the successor wholesaler for the same territory, less any amount paid to the terminated wholesaler by the brewer, brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit for the discontinued brand. If the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages are divided among 2 or more successor wholesalers, each successor wholesaler shall compensate the terminated

1 wholesaler for the fair market value of the distribution rights to any discontinued
2 brand of fermented malt beverages assumed by that successor wholesaler for the
3 applicable part of the same territory, less any amount paid to the terminated
4 wholesaler by the brewer, brewpub, brewer's agent, brewpub's agent, or holder of an
5 out-of-state shipper's permit for the discontinued brand. A terminated wholesaler
6 may not receive under this paragraph total compensation from the successor
7 wholesaler and brewer, brewpub, brewer's agent, brewpub's agent, or holder of an
8 out-of-state shipper's permit that exceeds the fair market value of the terminated
9 wholesaler's distribution rights specified under this paragraph.

History: 1981 c. 79, 202; 1983 a. 26, 67, 68, 182, 192, 538; 1985 a. 135; 1987 a. 308; 1989 a. 31, 253; 1991 a. 39; 1993 a. 112, 301; 1995 a. 320; 1997 a. 132, 166; 2001 a. 16, 38, 105; 2003 a. 303; 2005 a. 103; 2007 a. 9, 20; 2011 a. 32.

10 **SECTION 8.** 125.33 (10) (f) of the statutes is created to read:

11 125.33 (10) (f) Fair market value under par. (b) shall not include any amount
12 related to a brewer's or brewpub's retail sales within the terminated wholesaler's
13 territory. ✓

14 **SECTION 9. Nonstatutory provisions.**

15 (1) PROPOSED PERMANENT RULES. The department of revenue shall submit in
16 proposed form the rules required under section 125.29 (7) (c) of the statutes to the
17 legislative council staff under section 227.15 (1) of the statutes no later than the first
18 day of the 4th month beginning after the effective date of this subsection.

19 (2) EXCEPTION TO ECONOMIC IMPACT REPORT FOR RULES. Notwithstanding section
20 227.137 (2) of the statutes, the department of revenue is not required to prepare an
21 economic impact analysis for the rules required under section 125.29 (7) (c) of the
22 statutes.

23 (3) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
24 the department of revenue shall promulgate the rules required under section 125.29

✓
1 (7) (c) of the statutes, for the period before the effective date of the permanent rules
2 promulgated under section 125.29 (7) (c) of the statutes, but not to exceed the period
3 authorized under section 227.24 (1) (c) of the statutes, subject to extension under
4 section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and
5 (3) of the statutes, the department is not required to provide evidence that
6 promulgating a rule under this subsection as an emergency rule is necessary for the
7 preservation of public peace, health, safety, or welfare and is not required to provide
8 a finding of an emergency for a rule promulgated under this subsection.
9 Notwithstanding section 227.24 (1) (e) 1d. and 1g. of the statutes, the department is
10 not required to obtain approval of a statement of scope as provided in section 227.135
11 (2) or (4) of the statutes, or submit the proposed emergency rule in final draft form
12 to the governor for approval and obtain such approval, for a rule promulgated under
13 this subsection. ✓

14 **SECTION 10. Effective dates.** This act takes effect on the first day of the 4th
15 month beginning after publication, except as follows:

16 (1) SECTION 9 of this act takes effect on the day after publication.

17 (END)

D. Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3828/P1dn

ARG:.....

js

- late -

ATTN: Maggie Gau and Joe Hoey

Please review the attached draft carefully to ensure that it is consistent with your intent.

As I have previously indicated, I have great difficulty making sense of the brand compensation item of the instructions in the context of current law. Under current law, a *wholesaler* may be required to compensate *another wholesaler* for loss of brand distribution rights. Section 125.33 (10) (b) states that "a successor wholesaler shall compensate a terminated wholesaler for the fair market value of the *terminated wholesaler's distribution rights* to any discontinued brand of fermented malt beverages assumed by the successor wholesaler" (Emphasis added.) That is, the new wholesaler must provide compensation for the fair market value of the old wholesaler's distribution rights granted by the brewer. How could a wholesaler's distribution rights include a brewer's retail sales? Based on the instructions, I have created s. 125.33 (10) (f) in this draft but to me this provision has no legal effect (except perhaps to cause confusion) and simply does not fit within the statute. ✓

→ I believe this draft requires a change to the definition of "brewer" and "brewery premises." A "brewer" is defined as someone who makes beer. See s. 125.02 (2). In this draft, a "start-up brewer" is a "brewer" that does not make its own beer. So a treatment of s. 125.02 (2) is necessary. In addition, for a start-up brewer, the "principal place of business" is not the brewery, so a change in the definition of "brewery premises" in s. 125.02 (3) is also necessary. ✓

The definition of "start-up brewer" in the instructions states that a start-up brewer does not "have its *own* brewery premises." (Emphasis added.) I interpret this as meaning that the start-up brewer does not brew beer, so I have made this clarification in the draft. I believe this change is necessary to add clarity, particularly to distinguish the start-up brewer from a brewer that, under federal law, is an "alternating proprietor" which brews beer but does not have its "own brewery." ✓

The new definition of "out-of-state brewer" impacts one provision of current law, s. 125.30 (4), but I believe the definition is consistent with s. 125.30 (1) and (4).

The change in the definition of "brewery premises," and the way in which the concept of brewery premises is set out in the instructions and the draft, is significant. The

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practice has always been to have one place where the beer is made and where all required records are kept. When DOR needs to do a search or otherwise carry out a compliance function, there is one location to go to, the "brewery premises." (DOR's duties and authority are in part tied to the description of the brewery premises as set forth in the permit.) Under this draft, the start-up brewer's brewery premises will be its own office and facilities, plus the brewery premises where the beer is made. In this novel approach, two brewers will have the same brewery premises. My reading of the statutes is that each brewer (the contract brewer and the start-up brewer) can, independently: 1) bottle, package, and store beer on the brewery premises; 2) transport beer between the brewery premises and any depot or warehouse maintained by the brewer; and 3) make retail sales of beer on the brewery premises or at an off-site retail outlet. However, with the changes in the attached draft, I don't believe that a start-up brewer could sell, ship, or deliver beer to wholesalers from the brewery premises because the beer was not "manufactured by the brewer." See s. 125.29 (3) (d). Yet, as I read s. 125.29 (3m) (b), I believe the start-up brewer could sell, ship, and deliver beer to retailers. If these provisions are not consistent with your intent, please advise how to correct them. ✓

In addition, this novel approach of considering two brewers to simultaneously maintain the same brewery premises raises other issues. Which brewer is responsible for the occupational tax under s. 139.02? When DOR exercises its inspection and enforcement authority under s. 139.08 (4) and finds a violation, will DOR know whom to cite for the infraction? In other words, if the brewery is simultaneous the premises of more than one brewer, are both brewers responsible for violations committed on the premises? ✓

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3828/P1dn
ARG:cjs:jm

January 26, 2012

ATTN: Maggie Gau and Joe Hoey

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Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Hoey, Joseph
Sent: Tuesday, February 07, 2012 10:58 AM
To: Gary, Aaron
Cc: Gau, Maggie
Subject: RE: Draft review: LRB 11-3828/P1 Topic: Contract brewing, non-producing brewers, brand compensation for wholesalers

Aaron,

Please go ahead and prepare a /P2. We'll check with DOR on the rule making. Thanks for your work on this.

Joey

From: Gary, Aaron
Sent: Monday, February 06, 2012 9:52 PM
To: Hoey, Joseph
Cc: Gau, Maggie
Subject: RE: Draft review: LRB 11-3828/P1 Topic: Contract brewing, non-producing brewers, brand compensation for wholesalers

Hi Joey, Sorry I missed your call. My responses to your questions are below. I will prepare a /P2 draft to incorporate the change below unless I hear otherwise from you. Please feel free to call tomorrow if you want to discuss further. Aaron

From: Hoey, Joseph
Sent: Mon 2/6/2012 2:18 PM
To: Gary, Aaron
Cc: Gau, Maggie
Subject: FW: Draft review: LRB 11-3828/P1 Topic: Contract brewing, non-producing brewers, brand compensation for wholesalers

Aaron,

I read over your drafter's notes and I agree that under current law as modified by this draft, a start-up brewer might not have the authority to sell, ship, or deliver beer to wholesalers from the brewery premises because the beer was not "manufactured by the brewer." Could we add language to 125.29 (3) (d) that would give start-up brewers that authority - something like -

(d) The sale, shipment, transportation, and delivery, in original unopened packages or containers, to wholesalers, from the brewery premises, of fermented malt beverages that have been manufactured either by the brewer on those premises or on other premises of the brewer, or by a contract brewer for a start-up brewer.

Aaron: Yes I can incorporate something along these lines.

Also, I was wondering if the issues you raised at the end of your note about potential difficulties with DOR regulation and enforcement indicates that you think that this is something that DOR might not have the authority to address in the rule making process? Aaron: In some ways, Act 32 puts DOR in a bit of a tight spot in terms of rulemaking. With respect to oversight/enforcement, I would defer to DOR as to whether the rulemaking process (or the provisions of this bill) create any concerns - I would think that the enforcement side of the equation would not be the main issue for DOR in rulemaking, as presumably DOR will only make rules it can adequately enforce. The problem I see is that DOR rulemaking can aid to implement and interpret the statutes, but it cannot rewrite the statutes. So DOR has to walk a fine line in rulemaking to ensure that it does not actually override statutory provisions (such as 125.02 (2) and (3) - defs. of brewer and brewery premises) and 125.29 (3) (d) (which you quoted above)), which it does not have authority to do.

2/7/2012

Thanks,

Joey

Joseph P. Hoey
Office of State Representative Janet Bewley
74th Assembly District
(608) 266-7690 / (888) 534-0074

From: LRB.Legal
Sent: Friday, January 27, 2012 11:08 AM
To: Rep.Ringhand
Subject: Draft review: LRB 11-3828/P1 Topic: Contract brewing, non-producing brewers, brand compensation for wholesalers

Following is the PDF version of draft LRB 11-3828/P1 and drafter's note.

2/6 t/c from Joe - VM - 6-7690
- want to discuss d-note

2/7/2012